



General Assembly

Substitute Bill No. 6852

January Session, 2005

* _____HB06852ET_ENV032205_____*

AN ACT CONCERNING ENERGY TRANSMISSION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-50j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2005*):

3 (a) There is established a "Connecticut Siting Council", hereinafter
4 referred to as the "council", which shall be within the Department of
5 Public Utility Control.

6 (b) (1) Except for proceedings under chapter 445, subdivisions (2)
7 and (3) of this subsection and subsection (c) of this section and sections
8 22a-134cc, 22a-134ff and 22a-163 to 22a-163u, inclusive, the council
9 shall consist of: [(1)] (A) The Commissioner of Environmental
10 Protection, or his designee; [(2)] (B) the chairman, or his designee, of
11 the Public Utilities Control Authority; [(3)] (C) one designee of the
12 speaker of the House and one designee of the president pro tempore of
13 the Senate; and [(4)] (D) five members of the public, to be appointed by
14 the Governor, at least two of whom shall be experienced in the field of
15 ecology, and not more than one of whom shall have affiliation, past or
16 present, with any utility or governmental utility regulatory agency, or
17 with any person owning, operating, controlling, or presently
18 contracting with respect to a facility, a hazardous waste facility as
19 defined in section 22a-115, a regional low-level radioactive waste
20 facility as defined in section 22a-163a or ash residue disposal area,

21 except that no member who is initially appointed on or after the
22 effective date of this section shall have a present affiliation with any
23 utility or governmental utility regulatory agency, or with any person
24 owning, operating, controlling or presently contracting with respect to
25 a facility, a hazardous waste facility, as defined in section 22a-115, a
26 regional low-level radioactive waste facility, as defined in section 22a-
27 163a, or ash residue disposal area.

28 (2) For proceedings under this chapter initiated on or after the
29 effective date of this section with regard to applications for a facility
30 described in subdivision (1) of subsection (a) of section 16-50i, the
31 council shall consist of the members identified in subdivision (1) of this
32 subsection, and the Commissioner of Public Health or the
33 commissioner's designee and a representative of each regional
34 planning agency, created pursuant to section 8-31a, within whose
35 region such facility is to be located, provided such representative may
36 not be a resident of a municipality in which such facility is to be
37 located. If a representative of a regional planning agency is unable to
38 perform duties as such representative on the council due to illness, or
39 has a substantial financial or employment interest that is in conflict
40 with the proper discharge of such representative's duties under this
41 chapter, the planning agency shall appoint a substitute member for
42 proceedings on such proposal. A representative shall report any
43 substantial financial or employment interest that might conflict with
44 the proper discharge of such representative's duties under this chapter
45 to the planning agency who shall determine if such conflict exists. If
46 any state agency is the applicant, a representative shall not be deemed
47 to have a substantial employment conflict of interest because of
48 employment with the state unless such representative is directly
49 employed by the state agency making the application.

50 (3) For proceedings under this chapter initiated on or after the
51 effective date of this section with regard to applications for a facility
52 described in subdivision (4) of subsection (a) of section 16-50i, the
53 council shall consist of the members identified in subdivision (1) of this
54 subsection and the Commissioner of Public Health or the

55 commissioner's designee. If the designee is unable to perform duties as
56 such designee on the council due to illness, or has a substantial
57 financial or employment interest that is in conflict with the proper
58 discharge of such designee's duties under this chapter, the
59 Commissioner of Public Health shall designate a substitute member
60 for proceedings on such proposal. A designee shall report any
61 substantial financial or employment interest that might conflict with
62 the proper discharge of such designee's duties under this chapter to
63 the Commissioner of Public Health who shall determine if such
64 conflict exists.

65 (c) For proceedings under chapter 445, subdivision (1) of subsection
66 (b) of this section, this subsection and sections 22a-134cc, 22a-134ff and
67 22a-163 to 22a-163u, inclusive, the council shall consist of (1) the
68 Commissioners of Public Health and Public Safety or their designated
69 representatives; (2) the designees of the speaker of the House of
70 Representatives and the president pro tempore of the Senate as
71 provided in subsection (b) of this section; (3) the five members of the
72 public as provided in subsection (b) of this section; and (4) four ad hoc
73 members, three of whom shall be electors from the municipality in
74 which the proposed facility is to be located and one of whom shall be
75 an elector from a neighboring municipality likely to be most affected
76 by the proposed facility. The municipality most affected by the
77 proposed facility shall be determined by the permanent members of
78 the council. If any one of the five members of the public or of the
79 designees of the speaker of the House of Representatives or the
80 president pro tempore of the Senate resides [(1)] (A) in the
81 municipality in which a hazardous waste facility is proposed to be
82 located for a proceeding concerning a hazardous waste facility or in
83 which a low-level radioactive waste facility is proposed to be located
84 for a proceeding concerning a low-level radioactive waste facility, or
85 [(2)] (B) in the neighboring municipality likely to be most affected by
86 the proposed facility, the appointing authority shall appoint a
87 substitute member for the proceedings on such proposal. If any
88 appointee is unable to perform his duties on the council due to illness,

89 or has a substantial financial or employment interest which is in
90 conflict with the proper discharge of his duties under this chapter, the
91 appointing authority shall appoint a substitute member for
92 proceedings on such proposal. An appointee shall report any
93 substantial financial or employment interest which might conflict with
94 the proper discharge of his duties under this chapter to the appointing
95 authority who shall determine if such conflict exists. If any state
96 agency is the applicant, an appointee shall not be deemed to have a
97 substantial employment conflict of interest because of employment
98 with the state unless such appointee is directly employed by the state
99 agency making the application. Ad hoc members shall be appointed by
100 the chief elected official of the municipality they represent and shall
101 continue their membership until the council issues a letter of
102 completion of the development and management plan to the applicant.

103 (d) For proceedings under sections 22a-285d to 22a-285h, inclusive,
104 the council shall consist of (1) the Commissioners of Public Health and
105 Public Safety or their designated representatives; (2) the designees of
106 the speaker of the House of Representatives and the president pro
107 tempore of the Senate as provided in subsection (b) of this section, and
108 (3) five members of the public as provided in subsection (b) of this
109 section. If any one of the five members of the public or of the designees
110 of the speaker of the House of Representatives or the president pro
111 tempore of the Senate resides in the municipality in which an ash
112 residue disposal area is proposed to be located the appointing
113 authority shall appoint a substitute member for the proceedings on
114 such proposal. If any appointee is unable to perform his duties on the
115 council due to illness, or has a substantial financial or employment
116 interest which is in conflict with the proper discharge of his duties
117 under sections 22a-285d to 22a-285h, inclusive, the appointing
118 authority shall appoint a substitute member for proceedings on such
119 proposal. An appointee shall report any substantial financial or
120 employment interest which might conflict with the proper discharge of
121 his duties under said sections to the appointing authority who shall
122 determine if such conflict exists. If any state agency is the applicant, an

123 appointee shall not be deemed to have a substantial employment
124 conflict of interest because of employment with the state unless such
125 appointee is directly employed by the state agency making the
126 application.

127 (e) The chairman of the council shall be appointed by the Governor
128 from among the five public members appointed by him, with the
129 advice and consent of the House or Senate, and shall serve as chairman
130 at the pleasure of the Governor.

131 (f) The public members of the council, including the chairman, the
132 members appointed by the speaker of the House and president pro
133 tempore of the Senate and the four ad hoc members specified in
134 subsection (c) of this section, shall be compensated for their attendance
135 at public hearings [,] and executive sessions [,] or for their attention to
136 other council business [as may require their attendance] at the rate of
137 one hundred fifty dollars, provided in no case shall the daily
138 compensation exceed one hundred fifty dollars. The annual
139 compensation for any member [for attending such hearings] shall not
140 exceed twelve thousand dollars a year. Such members shall be
141 compensated as follows: (1) One day for preparing for each meeting of
142 the council, (2) one day for attending each meeting of the council, (3)
143 one day for attending each public hearing of the council, and (4) one-
144 quarter day for each quarter day reviewing materials for a public
145 hearing of the council based on an affidavit from such member
146 submitted to the executive director of the council showing the time
147 spent reviewing for such public hearing.

148 (g) The council shall, in addition to its other duties prescribed in this
149 chapter, adopt, amend, or rescind suitable regulations to carry out the
150 provisions of this chapter and the policies and practices of the council
151 in connection therewith, and appoint and prescribe the duties of such
152 staff as may be necessary to carry out the provisions of this chapter.
153 The chairman of the council, with the consent of five or more other
154 members of the council, may appoint an executive director, who shall
155 be the chief administrative officer of the Connecticut Siting Council.

156 The executive director shall be exempt from classified service.

157 (h) Prior to commencing any hearing pursuant to section 16-50m,
 158 the council shall consult with and solicit written comments from the
 159 Department of Environmental Protection, the Department of Public
 160 Health, the Council on Environmental Quality, the Department of
 161 Agriculture, the Department of Public Utility Control, the Office of
 162 Policy and Management, the Department of Economic and
 163 Community Development and the Department of Transportation. In
 164 addition, the Department of Environmental Protection shall have the
 165 continuing responsibility to investigate and report to the council on all
 166 applications which prior to October 1, 1973, were within the
 167 jurisdiction of said Department of Environmental Protection with
 168 respect to the granting of a permit. Copies of such comments shall be
 169 made available to all parties prior to the commencement of the
 170 hearing. Subsequent to the commencement of the hearing, said
 171 departments and council may file additional written comments with
 172 the council within such period of time as the council designates. All
 173 such written comments shall be made part of the record provided by
 174 section 16-50o. Said departments and council shall not enter any
 175 contract or agreement with any party to the proceedings or hearings
 176 described in this section or section 16-50p, that requires said
 177 departments or council to withhold or retract comments, refrain from
 178 participating in or withdraw from said proceedings or hearings.

179 (i) For proceedings under this chapter initiated on or after the
 180 effective date of this section with regard to applications for a facility
 181 described in subdivision (1) of subsection (a) of section 16-50i, the
 182 council shall require each applicant, before proceeding with a hearing
 183 on the application, to inform each municipality in which such facility is
 184 to be located of each alternative route of such facility.

185 Sec. 2. Section 16-50p of the general statutes is repealed and the
 186 following is substituted in lieu thereof (*Effective July 1, 2005*):

187 (a) (1) In a certification proceeding, the council shall render a

188 decision upon the record either granting or denying the application as
189 filed, or granting it upon such terms, conditions, limitations or
190 modifications of the construction or operation of the facility as the
191 council may deem appropriate.

192 (2) The council's decision shall be rendered in accordance with the
193 following:

194 (A) Not later than twelve months after the deadline for filing an
195 application following the request-for-proposal process for a facility
196 described in subdivision (1) or (2) of subsection (a) of section 16-50i or
197 subdivision (4) of said subsection (a) if the application was
198 incorporated in an application concerning a facility described in
199 subdivision (1) of said subsection (a);

200 (B) Not later than one hundred eighty days after the deadline for
201 filing an application following the request-for-proposal process for a
202 facility described in subdivision (4) of [said] subsection (a) of section
203 16-50i, and an application concerning a facility described in
204 subdivision (3) of said subsection (a), provided such time periods may
205 be extended by the council by not more than one hundred eighty days
206 with the consent of the applicant; and

207 (C) Not later than one hundred eighty days after the filing of an
208 application for a facility described in subdivision (5) or (6) of [said]
209 subsection (a) of section 16-50i, provided such time period may be
210 extended by the council by not more than one hundred eighty days
211 with the consent of the applicant.

212 (3) The council shall file, with its order, an opinion stating in full its
213 reasons for the decision. The council shall not grant a certificate, either
214 as proposed or as modified by the council, unless it shall find and
215 determine:

216 (A) Except as provided in subsection (c) of this section, public need
217 for the facility and the basis of the need;

218 (B) The nature of the probable environmental impact of the facility
219 alone and cumulatively with other existing facilities, including a
220 specification of every significant adverse effect, including, but not
221 limited to, electromagnetic fields that, whether alone or cumulatively
222 with other effects, on, and conflict with the policies of the state
223 concerning, the natural environment, ecological balance, public health
224 and safety, scenic, historic and recreational values, forests and parks,
225 air and water purity and fish, aquaculture and wildlife;

226 (C) Why the adverse effects or conflicts referred to in subparagraph
227 (B) of this subdivision are not sufficient reason to deny the application;

228 (D) In the case of an electric transmission line, (i) what part, if any,
229 of the facility shall be located overhead, (ii) that the facility conforms to
230 a long-range plan for expansion of the electric power grid of the
231 electric systems serving the state and interconnected utility systems
232 and will serve the interests of electric system economy and reliability,
233 and (iii) that the overhead portions, if any, of the facility are cost
234 effective and the most appropriate alternative based on a life-cycle cost
235 analysis of the facility and underground alternatives to such facility,
236 are consistent with the purposes of this chapter, with such regulations
237 or standards as the council may adopt pursuant to section 16-50t,
238 including, but limited to, the council's best management practices for
239 electric and magnet fields for electric transmission lines and with the
240 Federal Power Commission "Guidelines for the Protection of Natural
241 Historic Scenic and Recreational Values in the Design and Location of
242 Rights-of-Way and Transmission Facilities" or any successor guidelines
243 and any other applicable federal guidelines and are to be contained
244 within an area that provides a buffer zone that protects the public
245 health and safety, as determined by the council. For proceedings under
246 this chapter initiated on or after the effective date of this section, the
247 siting council shall establish such buffer zone based on such electric
248 and magnet fields produced by the transmission line operating at its
249 maximum capacity over its projected life. In establishing such buffer
250 zone, the council shall take into consideration, among other things,
251 residential areas, private or public schools, licensed child day care

252 facilities, licensed youth camps or public playgrounds adjacent to the
253 proposed route of the overhead portions and the level of the voltage of
254 the overhead portions and any existing overhead transmission lines on
255 the proposed route. At a minimum, the existing right-of-way shall
256 serve as the buffer zone;

257 (E) In the case of an electric or fuel transmission line, that the
258 location of the line will not pose an undue hazard to persons or
259 property along the area traversed by the line;

260 (F) In the case of an application that was heard under a consolidated
261 hearing process with other applications that were common to a
262 request-for-proposal, that the facility proposed in the subject
263 application represents the most appropriate alternative among such
264 applications based on the findings and determinations pursuant to this
265 subsection; and

266 (G) In the case of a facility described in subdivision (6) of subsection
267 (a) of section 16-50i that is proposed to be installed on land under
268 agricultural restriction, as provided in section 22-26cc, that the facility
269 will not result in a material decrease of acreage and productivity of the
270 arable land.

271 (b) (1) Prior to granting an applicant's certificate for a facility
272 described in subdivision (5) or (6) of subsection (a) of section 16-50i,
273 the council shall examine, in addition to its consideration of
274 subdivisions (1) to (5), inclusive, of subsection (a) of this section: (A)
275 The feasibility of requiring an applicant to share an existing facility, as
276 defined in subsection (b) of section 16-50aa, within a technically
277 derived search area of the site of the proposed facility, provided such
278 shared use is technically, legally, environmentally and economically
279 feasible and meets public safety concerns, (B) whether such facility, if
280 constructed, may be shared with any public or private entity which
281 provides telecommunications or community antenna television service
282 to the public, provided such shared use is technically, legally,
283 environmentally and economically feasible at fair market rates, meets

284 public safety concerns, and the parties' interests have been considered
285 and (C) whether the proposed facility would be located in an area of
286 the state which the council, in consultation with the Department of
287 Environmental Protection and any affected municipalities, finds to be a
288 relatively undisturbed area that possesses scenic quality of local,
289 regional or state-wide significance. The council may deny an
290 application for a certificate if it determines that (i) shared use under the
291 provisions of subparagraph (A) of this subdivision is feasible, (ii) the
292 applicant would not cooperate relative to the future shared use of the
293 proposed facility, or (iii) the proposed facility would substantially
294 affect the scenic quality of its location and no public safety concerns
295 require that the proposed facility be constructed in such a location.

296 (2) When issuing a certificate for a facility described in subdivision
297 (5) or (6) of subsection (a) of section 16-50i, the council may impose
298 such reasonable conditions as it deems necessary to promote
299 immediate and future shared use of such facilities and avoid the
300 unnecessary proliferation of such facilities in the state. The council
301 shall, prior to issuing a certificate, provide notice of the proposed
302 facility to the municipality in which the facility is to be located. Upon
303 motion of the council, written request by a public or private entity
304 which provides telecommunications or community antenna television
305 service to the public or upon written request by an interested party, the
306 council may conduct a preliminary investigation to determine whether
307 the holder of a certificate for such a facility is in compliance with the
308 certificate. Following its investigation, the council may initiate a
309 certificate review proceeding, which shall include a hearing, to
310 determine whether the holder of a certificate for such a facility is in
311 compliance with the certificate. In such proceeding, the council shall
312 render a decision and may issue orders which it deems necessary to
313 compel compliance with the certificate, which orders may include, but
314 not be limited to, revocation of the certificate. Such orders may be
315 enforced in accordance with the provisions of section 16-50u.

316 (c) (1) The council shall not grant a certificate for a facility described
317 in subdivision (3) of subsection (a) of section 16-50i, either as proposed

318 or as modified by the council, unless it finds and determines a public
319 benefit for the facility.

320 (2) The council shall not grant a certificate for a facility described in
321 subdivision (1) of subsection (a) of section 16-50i which is substantially
322 underground or underwater except where such facilities interconnect
323 with existing overhead facilities, either as proposed or as modified by
324 the council, unless it finds and determines a public benefit for the
325 facility, in the case of such facility that is substantially underground,
326 and a public need for such facility, in the case of such facility that is
327 substantially underwater.

328 (3) For purposes of [subparagraph (A) of this subdivision] this
329 subsection, a public benefit exists if such a facility is necessary for the
330 reliability of the electric power supply of the state or for the
331 development of a competitive market for electricity and a public need
332 exists if such facility is necessary for the reliability of the electric power
333 supply of the state.

334 (4) Any application for an electric transmission line with a capacity
335 of three hundred forty-five kilovolts or more that is filed on or after
336 May 1, 2003, and that proposes the underground burial of such line in
337 all residential areas and overhead installation of such line in industrial
338 and open space areas affected by such proposal shall have a rebuttable
339 presumption of meeting a public benefit for such facility if the facility
340 is substantially underground, and meeting a public need for such
341 facility if the facility is substantially above ground. Such presumption
342 may be overcome by evidence submitted by a party or intervenor to
343 the satisfaction of the council.

344 (d) If the council determines that the location of all or a part of the
345 proposed facility should be modified, it may condition the certificate
346 upon such modification, provided the municipalities, and persons
347 residing or located in such municipalities, affected by the modification
348 shall have had notice of the application as provided in subsection (b) of
349 section 16-50l.

350 (e) In an amendment proceeding, the council shall render a decision
351 within ninety days of the filing of the application or adoption of the
352 resolution initiating the proceeding. The council shall file an opinion
353 with its order stating its reasons for the decision. The council's decision
354 shall include the findings and determinations enumerated in
355 subsection (a) of this section [which] that are relevant to the proposed
356 amendment.

357 (f) A copy of the order and opinion issued therewith shall be served
358 upon each party and a notice of the issuance of the order and opinion
359 shall be published in such newspapers as will serve substantially to
360 inform the public of the issuance of such order and opinion. The name
361 and address of each party shall be set forth in the order.

362 (g) In making its decision as to whether or not to issue a certificate,
363 the council shall in no way be limited by the fact that the applicant
364 may already have acquired land or an interest therein for the purpose
365 of constructing the facility [which] that is the subject of its application.

366 (h) For purposes of this section, a public need exists for an energy
367 facility if such facility is necessary for the reliability of the electric
368 power supply of the state.

369 (i) For a facility described in subdivision (1) of subsection (a) of
370 section 16-50i, with a capacity of three hundred forty-five kilovolts or
371 greater, there shall be a presumption that a proposal to place the
372 overhead portions, if any, of such facility adjacent to residential areas,
373 private or public schools, licensed child day care facilities, licensed
374 youth camps or public playgrounds is inconsistent with the purposes
375 of this chapter. An applicant may rebut this presumption by
376 demonstrating to the council that it will be technologically infeasible to
377 bury the facility. In determining such infeasibility, the council shall
378 consider the effect of burying the facility on the reliability of the
379 electric transmission system of the state. For the purposes of this
380 subsection, the council may not determine that it is technologically
381 infeasible to bury the facility based on the cost of such burial unless the

382 council determines, pursuant to regulations adopted pursuant to
383 chapter 54, that such costs are exorbitant.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>July 1, 2005</i>	16-50j
Sec. 2	<i>July 1, 2005</i>	16-50p

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Joint Favorable Subst. C/R

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